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No. 129.

In the Supreme Court of the United States

OCTOBER TERM, 1904.

SALLIE J. McDANIEL, ET AL., APPELLANTS,

vs.

GEORGE M. TRAYLOR, ET AL., APPELLEES.

BRIEF FOR APPELLEES.

N. W. NORTON,
Counsel for Appellees.

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Where the purpose of a Bill is to relieve property of a lien or charge, the amount of the encumbrance is the test of jurisdiction in the Courts of the United States, and not the value of the property.

In Ross vs. Prentiss, 3 How. 771, the appeal was dismissed, because the execution against which relief was sought, was for less than the jurisdictional amount. That the property upon which it was levied exceeded the jurisdictional amount in value, was unimportant. "The only matter in controversy is the amount claimed on the execution." "The jurisdiction does not depend on any contingent loss."

In Carne vs. Russ, 152 U. S., 250, the action was to remove the cloud from title, and the appeal was

dismissed upon the ground that the controverted portion of the charge against the land—a claim for for taxes—was under the jurisdictional amount.

In Farmer's Bank vs. Hoop, 7 Pet., 168, the action was to enforce a contract lien for less than the jurisdictional amount (in this court,) and after dismissal below was brought here for review, upon the contention that, the property being worth over $1000, this court had jurisdiction. The appeal was dismissed. "The matter in controversy is the debt claimed in the Bill."

An earlier case is Peyton vs. Robertson, 9 Wheat, 527. There the plaintiff's chattels had been seized for rent and she brought replevin and laid her damages at $1,000. It was held that the amount of the rent—$591—was the amount in controversy, and a motion to reinstate the case after dismissal was denied.

No one has ever succeeded in having the value of property taken as the jurisdictional test, where the purpose of the bill was to relieve it of a lien for a smaller sum. And in this connection the Court has frequently mentioned that contingent losses to come from the enforcement of the lien can not be considered. If the law were otherwise than as here claimed, a lien for one dollar could be litigated in the Federal Courts, provided it was upon property of greater value than $2,000.

This Court reviewed the authorities in Gibson vs. Shufeldt, 122 U. S., 27.

Separate causes can not be combined to make the amount necessary to jurisdiction in the courts of the United States.

On this point a reference to authorities is useless; but to avoid abruptness, an excerpt from the opinion of this Court in Walter vs. Railroad Co., 147 U. S., 370, 373, is given:

"It is well settled in this Court that when two or more plaintiffs, having several interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on an appeal in this court, as to those whose claims exceed the jurisdictional amount; and that, when two or more defendants are sued by the same plaintiff in one suit the test of jurisdiction is the joint or several character of the liability to the plaintiff. This was the distinct ruling of this court in Seaver vs. Bigelow, 5 Wall., 208; Russell vs. Stansell, 105 U. S., 303; Trust Co. vs. Waterman, 106 U. S., 265; Hawley vs. Fairbanks, 108 U. S., 543; Stewart vs. Dunham, 115 U. S., 61; Gibson vs. Shufeldt, 122 U. S., 27; Clay vs. Field, 138 U. S., 464."

The bill is against persons who must respond severally to the plaintiff, if at all; and neither of the judgments is for as much as $2,000.

That the several persons made defendants had separate claims and nothing jointly is manifest, and argument on the point superfluous, notwithstanding the statement in appellant's brief (3) that they were "allowed in one judgment."

It is not so alleged in the bill, and would be wholly immaterial if it were. The manner of the clerk's entry could not be very potent.

In Marshall vs. Holmes, 141 U. S., 589, the jurisdiction was not defeated by the fact that the liability had been entered in several small judgments; neither can it be given by an entry of separate matters in one general order.

Every part of the bill in the case at bar shows the separate nature of the claims that were allowed by the probate court. The statement is that "John Evans contracted and incurred debts and obligations to the several defendants herein, aggregating the sum of $3,000.00, as well as debts and obligations to various other persons, and thereafter became and was insolvent and unable to pay his debts and obligations in full, * * * * and the said James Evans, administrator, fraudulently and illegally approved for allowance against the estate of Hiram Evans, deceased, the several claims and demands against the said John Evans held by the said defendants as follows, to-wit: This statement is followed by twenty-eight separate claims in varying sums from $4.23 to $589.88. (Printed record, pp. 4, 5).

And instead of being referred to in the bill as one judgment, they are uniformly spoken of otherwise as: "The aforesaid *judgments* of the probate court of St. Francis County, Arkansas, allowing and classifying said false, fraudulent and fictitious claims and demands of the said defendants, passed

beyond the control of said probate court." * * * * And, "that all the acts and doings of the defendants toward procuring the said *judgments* of the probate court of St. Francis County, Arkansas, were wrongful, fraudulent and inequitable, and * * * the said defendants ought not to have or enjoy the benefit or advantage of the said *judgments*." And in the prayer: "And that the said *judgments* of the probate court of St. Francis County, Arkansas, be set aside and for nought held and esteemed * * * and that the defendants be forever enjoined and restrained from asserting or attempting to assert or enforce the said *judgments*, or to take any manner of benefit, profit or advantage thereunder."

Appeals in cases of this character have been uniformly dismissed.

Respectfully submitted,

N. W. NORTON,

Counsel for Appellees.